

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.459 OF 2003
CUTTACK THIS THE 09th DAY OF December ' 2005

AKSHYA KUMAR MEHER ... APPLICANT

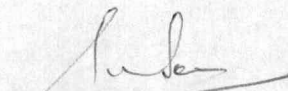
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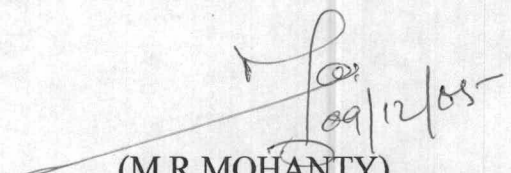
UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

9. Whether it be referred to reporters or not ?

10. Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not ?


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)

10
**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.459 OF 2003
CUTTACK THIS THE 09th DAY OF December 2005

CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)**

...

AKSHYA KUMAR MEHER, aged about 34 years,
Son of late Surubabu Meher, resident of Village/PO: Tarbha,
Dist. Sonepur, at present working as Drawing Teacher(Primary),
Ordnance Factory School, Qr. No.33452/5th Phase, O.F.Badmal Estate,
At/PO- Badmal, Dist. Bolangir.

...Applicant

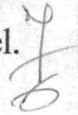
By the Advocates : M/s. Dr. D.B.Mishra,
B.Chalan.Advocates.

-VERSUS-

1. Union of India represented through its Secretasry, Ministry of Defence, Government of India, New Delhi.
2. Chairman & Managing Director, Ordnance Factory Badmal,6 Esplanade East, Calcutta-69.
3. General Manager, O.F., Badmal, Bolangir, Orissa.
4. Pravas Ranjan Sarangi, Roll No.14, Recruitment of Drawing Art & Craft Instructor, based on written test and Interview/Practicala test held on dt. 28.7.2003,C/o.General Manager, At/Po. Ordnance Factory, Badmal, Dist. Bolangir, Pin – 767 770.

...Respondents

By the Advocates : Mr.U.B.Mohapatra, Sr.St.Counsel.



- 2 -

O R D E R

MR.M.R.MOHANTY, MEMBER (JUDICIAL):-

Pursuant to an advertisement (as published in the Employment News dated 16-22 February, 2002) inviting applications from intending candidates to fill-up the post of Drawing/Art & Craft Instructor (High School) in the Ordnance Factory School at Badmal in the District of Bolangir/Orissa, Applicant (an Art & Craft Primary Teacher of the said School) applied and faced the selection/interview held on 28-07-2003 to 30-07-2003 and, according to the Applicant, although he did well in the said interview/test and although the post in question was required to be filled up by way of promotion, instead of appointing him the Departmental Respondents selected and appointed one Pravas Ranjan Sarangi, (Respondent No.4) in the said post. It is the grievance of the Applicant that although he made representation under Annexure 12 dated 01-08-2005, no heed was paid to his grievances and, in the said premises, he has approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 prayer to quash the selection and appointment of the Respondent No.4 (on the ground that the same was done de hors the provisions of the Recruitment Rules and because the category of the post of Drawing/Art & Craft Instructor (High School) is meant to be filled up exclusively (100%) by promotees) and to direct the Respondents to

12
- 3 -
consider the claim of the Applicant (as he is entitled to get promotion, as per the Rule, to the post of Drawing/Art & Craft Instructor of High School ; which is 100% earmarked for promotees and because he possess all the required qualification and experience) for being appointed on promotion.

2. Departmental Respondents have filed their counter; wherein they have stated that, after having applied and appeared in the selection test, the Applicant is estopped under law to challenge the selection (and appointment of Respondent No.4) on the ground that the said post ought to have been filled up only by promotion. As regards the merits of the matter, it has been stated by the Respondents that the post of Drawing/Art & Craft Instructor for High School is a constituent of Trained Graduate Teacher (TGT) grade and it has no separate sanction and its sanction is included within the total sanction of TGT cadre and the Respondents have the power to fill-up the post 50% by direct recruitment and 50% by promotion. Since no existing Art & Craft Primary Teacher was eligible to be promoted to the post of Drawing/ART & Craft Instructor of High School, it was decided by the Ordnance Factory Board to fill-up the post by resorting to the process of direct recruitment in the interest of exigencies of administration and the students at large. Further case of the Respondents is that the post in question is usually factory based post having no all India transfer liability

13 -4-

and, therefore, being single post in the Ordnance Factory Badmal, the same was decided to be filled up by direct recruitment. Applicant being the only incumbent available in the feeder grade and as he did not have the requisite years of service/experience to be promoted, in the interest of the institution and the student at large, it was decided by the competent authorities to fill-up the said post by way of direct recruitment and, therefore, the Applicant can not claim as a matter of right to be promoted to the said post; nor the Applicant can have any right to claim to keep the said post vacant till he becomes eligible to get promotion. With the above submissions, the Respondents have opposed the prayer/case of the Applicant.

3. Heard Dr. D.B.Mishra, learned counsel appearing for the Applicant and Mr. U.B.Mohapatra, Learned Senior Standing Counsel appearing for the Respondents and perused the materials placed on record. Dr. Mishra, learned counsel appearing for the Applicant, by producing the copy of the Recruitment Rules, has tried to persuade us to the effect that since the post in question was required to be filled up by promotion, the Respondents by filling up of the post by direct recruitment, have blocked the promotional channel of the Applicant and thereby the Applicant shall have to retire in the same post in which post he initially joined. It has further been submitted by the learned counsel appearing for the Applicant that there was no power available with the

Respondents to deviate from the Rules and once rules provide for filling up of the post by way of promotion, question of direct recruitment does not arise .

On the other hand, learned Senior Standing Counsel appearing for the Respondents countered the arguments advanced by the learned counsel for the Applicant by reiterating the stand taken by the Respondents in their counter.


4. We have gone through the Rules/materials placed on record and considered the submissions of the rival parties. On perusal of the rules it is clear that the post in question is/was to be filled up by way of promotion from feeder grade. Equally it is also clear that the Applicant does not have the requisite qualification to hold the said post by way of promotion. There is no doubt, law is well settled that once in the rules it has been provided that the post is meant to be filled up by way of promotion there should not have been any deviation. At the same time, we may record that it is the primary duty of the authorities to see the smooth functioning of the institution and the education of the student is the paramount consideration. It is the admitted fact of the parties that the Applicant was the only incumbent available in the feeder grade and he was not eligible and as per the decision of the highest authorities/Ordnance Factory Board (in the present case, the Rule making authority; so far Rules for recruitment of Teachers at Ordnance Factory

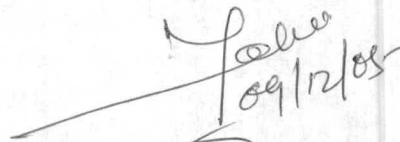
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- 6 -

level are concerned) the post was notified to be filled up by way of direct recruitment. It can not be said that there is no power available with the said authorities to take decision (in the manner/circumstances, it was taken) in the interest of the institution and student at large. The post in question has been sanctioned taking into the interest of the students to impart teaching. When it was felt necessary to fill-up the said post, in the interest of the Institution, the Authorities could not have waited till one is eligible in the feeder grade to hold the post. Therefore, the action of the authorities in the facts and circumstances, cannot be faulted. That apart, the Applicant, having offered his candidature and having faced the selection, cannot challenge the same to be illegal on the ground that the post was meant to be filled up only by way of promotion and that the Respondents have illegally filled up the said post by way of direct Recruitment. He is, virtually, estopped to challenge the selection. When the Applicant was not eligible to hold the post by promotion, neither he has any right to claim for promotion nor can it be said that this Original Application is maintainable at the behest of an ineligible candidate.

5. In view of the aforesaid discussions, we find no merit in this Original Application; which is accordingly dismissed. There shall be no order as to costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)